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July 22, 2005

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Second Floor
Boston, MA 02110

**Re: D.T.E. 05-04 – Verizon Massachusetts' Complaint Concerning
Customer Transfer Charges Imposed by Broadview Networks, Inc.**

Dear Ms. Cottrell:

Enclosed for filing in the above-referenced matter is Verizon Massachusetts' Reply Brief.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Barbara Anne Sousa".

Barbara Anne Sousa

Enclosures

cc: Jesse Reyes, Hearing Officer
Paula Foley, Assistant General Counsel - Telecommunications Division
Michael Isenberg, Director - Telecommunications Division
April Mulqueen, Assistant Director - Telecommunications Division
Stella Finn, Analyst – Telecommunications Division
Attached D.T.E. 05-04 Service List

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 05-4

While Broadview’s charges mirror the rate levels of Verizon MA’s Service Order Charge and Manual Intervention Surcharge, they are applied in a vastly different context and manner, and thus are not comparable. Verizon MA applies its Service Order Charge and/or Manual Intervention Surcharge on a per-order basis only when a competitive local exchange carrier (“CLEC”) orders unbundled network elements (“UNEs”) or switched interconnection arrangements from Verizon MA. *See* Verizon Tariff M.D.T.E. No. 17, Part A, Sec. 3.3.2; Verizon Exhibit 1, at 13. By contrast, Broadview applies its Service

Transfer Charges on a per-line, not per-order basis, and imposes those charges even if the retail customer has transferred to a *fully facilities-based* carrier (i.e., Verizon MA) that utilizes its own loop and switching facilities - and thus neither needs nor requests any network elements from Broadview.

Broadview simply ignores the fact that it is the wholesale order processing activities associated with Verizon MA's provision of wholesale UNEs to the CLEC - not Verizon MA's performance of administrative tasks associated with the disconnection of the end-user customer's service - that trigger the application of Verizon MA's Service Order Charges and/or Manual Intervention Surcharge. Accordingly, Broadview's statement that its Service Transfer Charges are analogous to Verizon MA's charges is factually incorrect. The New York Public Service Commission ("NYPSC") recognized this distinction in its recent decision,¹ and ordered Broadview to withdraw those charges from its tariff. The Department should do the same.

Although Verizon MA anticipated in its Initial Brief most of Broadview's arguments, several of Broadview's' claims warrant an additional response.

ARGUMENT

A. Broadview's Service Transfer Charges Are Not Lawful Because They Are Not Comparable to Verizon MA's Rates and Are Not Cost-Based.

The thrust of Broadview's argument is that it should be allowed to charge Verizon MA for the same services at the same rate levels. Broadview contends that "the services for which Broadview assesses either an Electronic Processing or Manual

¹ Complaint and Petition of Verizon New York Inc. Concerning Service Transfer Charges Imposed by Broadview Networks, Inc., Case 05-C-0066, *Order Granting, In Part, Verizon New York Inc.'s Complaint and Petition on Broadview Networks, Inc.'s Customer Service Transfer Charges*, at 7 (issued and effective June 29, 2005) (hereinafter referred to as "*Broadview Order*").

Processing Service Transfer Charge mirror those for which Verizon MA levies Service Order Charges and Manual Intervention Surcharges.” Broadview Initial Brief, at 14. Broadview further states that “under the Federal Communications Act, ... rates charged by competitors are presumed reasonable as long as they do not exceed the comparable rate charged by the incumbent.” Broadview Initial Brief, at 3. If Broadview had applied that principle in this case, the Service Transfer Charges billed to Verizon MA would be “zero.”

Verizon MA has provided irrefutable testimony that its Service Order Charge and Manual Intervention Surcharge apply *only* when a CLEC orders UNE loops or ports from Verizon MA on a wholesale basis to serve an end-user customer that has transferred from Verizon to the CLEC. Verizon MA Initial Brief, at 4-9. Thus, a *fully facilities-based* carrier pays no such charges. To the extent that Verizon MA incurs retail costs associated with administrative tasks performed to disconnect the end-user customer’s service when that customer moves to another carrier, those costs are recovered either from the retail customer (*i.e.*, the cost-causer) or absorbed by Verizon MA as a general cost of providing retail service. *Id.* at 8-9, 12.

While Broadview has mirrored Verizon MA’s rate levels in setting its Service Transfer Charges, Broadview does not apply its charges in the same manner. Broadview admittedly provides no network facilities or UNEs to Verizon MA to serve former Broadview end-user customers who transfer service to Verizon MA. Verizon Exhibits 14, 15, and 16. As a *fully facilities-based* carrier, Verizon MA neither requires nor requests any such network elements. Verizon MA Initial Brief, at 9-14. Yet, Broadview has billed Verizon MA those Service Transfer Charges even though no service orders for

UNEs or other wholesale arrangements were processed. Accordingly, Broadview's charges are *not* comparable to Verizon MA's rates under like circumstances – nor does any other CLEC apply charges in this manner in Massachusetts.

Indeed, if the Department were to approve Broadview's charges, it would establish a precedent enabling all carriers, including Verizon MA, to impose comparable charges, thereby essentially taxing the mere migration of customer between carriers. This is not sound public policy and not a result that Verizon MA or the many other carriers operating in the state seek. Indeed, as one carrier – Level 3 Communications - correctly observed in opposing Broadview's charges, they operate to “chill competition and reduce consumer choice.” Verizon MA Initial Brief, at 13-14.

Because Broadview does not perform the same wholesale unbundled loop provisioning functions that are associated with Verizon MA's \$1.02 Service Order Charge or \$15.39 Manual Intervention Surcharge, Broadview should *not* be able to collect those same charges from Verizon MA, or any other carrier, when a Broadview customer migrates to another exchange provider. The minimal number portability activities and administrative tasks required of Broadview when one of its retail customers switches to Verizon MA are, in essence, the same functions that Verizon MA performs when one of its retail customers transfers to a *fully facilities-based* CLEC. In such cases, Verizon MA imposes *no* charges whatsoever on the CLEC. And, to Verizon MA's knowledge, no other local exchange carrier in Massachusetts imposes such charges in comparable situations. Accordingly, there is no basis for treating the record clean-up work performed by Broadview as a wholesale service, or for imposing wholesale charges on Verizon MA or any other CLEC for performing those tasks.

Finally, Broadview has failed to produce any costs to support its Service Transfer Charges. Instead, Broadview relies solely on the argument that its charges are comparable to Verizon MA's rates, which is clearly untrue. Thus, to allow Broadview to impose these unsubstantiated charges on Verizon MA to transfer a Broadview retail customer's service to Verizon MA would be unlawful, unreasonable, and anti-competitive. Verizon MA Initial Brief, at 12-14. Absent a linkage to a comparable wholesale rate for a like service requested by or provided to Verizon MA in connection with the customer transfer, there is no justification for Broadview to impose *any* charge on Verizon MA.

B. Broadview Mischaracterizes the Application of the *Cavalier Virginia* Arbitration Decision and the NYPSC's Recent *Broadview Order*.

In its Initial Brief, Broadview misapplies the findings in both the FCC's Wireline Competition Bureau's ("WCB") *Cavalier Virginia* Arbitration and the NYPSC's recent *Broadview Order* to the facts presented in this proceeding. Broadview Initial Brief, at 4-5.

Verizon MA has established that its Service Order Charge and Manual Intervention Surcharge recover the costs it incurs when a CLEC orders wholesale services - such as UNE loops or ports - to serve a Verizon MA customer that has transferred to the CLEC. They do not apply when a Verizon end-user customer transfers service to a *fully facilities-based* CLEC because no wholesale order processing activities are required. Thus, Broadview cannot impose Service Transfer Charges on another carrier unless it is also providing an unbundled loop, port or other network facilities to that carrier to serve the end-user customer.

In the *Cavalier Virginia* Arbitration,² the FCC's Wireline Competition Bureau ("WCB") stated that "[t]o the extent that Cavalier has demonstrated that it performs tasks comparable to those performed by Verizon, it would violate section 251(c)(2)(D) to allow Verizon to assess a charge on Cavalier but disallow a comparable charge by Cavalier on Verizon." 18 FCC Rcd at 887, ¶ 189. The WCB also determined that rates charged by CLECs are presumptively reasonable where such rates do not exceed the "comparable" rate charged by the incumbent. *Id.* at ¶ 205, n. 679.

Broadview's Service Transfer Charges are not "comparable to" any Verizon MA charge because Verizon MA orders nothing from Broadview when a customer migrates to Verizon MA. Therefore, in applying the principle articulated by the WCB in the *Cavalier Virginia* Arbitration,³ Verizon MA should be charged nothing.

Likewise, in applying the NYPSC's findings in its recent *Broadview Order* to the facts in this Massachusetts proceeding, it is clear that Broadview's Service Transfer Charges should be rescinded. The NYPSC correctly concluded that while "there may be some costs associated with performing such [administrative] functions, Broadview has not quantified those costs, nor does Verizon charge other carriers in a similar situation."

² *In the Matter of Petition of Cavalier Telephone LLC Pursuant to Section 252(e)(5) of the Communications Act of Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Arbitration*, WC Docket No. 02-359, Memorandum Opinion and Order, 18 FCC Rcd 25, 887, ¶ 189 (CCB released Dec. 12, 2003) (footnote omitted).

³ As indicated in Verizon MA's Initial Brief, Verizon has filed for reconsideration and clarification of the WCB's *factual* finding - made on the basis of a somewhat ambiguous and unclear record — that "Cavalier's work in connection with a Verizon winback is similar in purpose and scope to the work that Verizon is responsible for performing when Cavalier submits a local service request to Verizon to move a customer from Verizon to Cavalier." *Id.* at ¶ 204. As Verizon MA demonstrated in this Massachusetts proceeding – and as the NYPSC recognized in its *Broadview Order* – Verizon MA's *wholesale* rates do not recover the costs for transferring a retail customer's service, but rather for processing CLEC orders for UNE loops to serve their retail customers. This is distinguishable from Broadview's application of its charges.

Broadview Order at 7. Accordingly, the NYPSC ruled that “Broadview should file appropriate tariff revisions eliminating its customer service transfer charges.”⁴ *Id.* at 8.

The Department is presented here with essentially the same facts as the NYPSC. Faced with Broadview Service Transfer Charges that are not comparable to Verizon MA’s rates and not supported by any cost data, the Department must order the withdrawal of Broadview’s charges.

C. Verizon MA’s Use of Broadview’s Web Center Interface Has No Bearing on the Application of Service Transfer Charges.

Broadview attempts to link Verizon MA’s use of its Web Center interface to obtain customer service records (“CSRs”) or submit Local Service Requests (“LSRs”) to the application of its Service Transfer Charges. Broadview Initial Brief, at 14-16. This is totally inappropriate – and inconsistent with Verizon MA’s application of its charges.

As previously stated, Verizon MA’s charges are only applied in connection with processing orders for wholesale services, such as UNE loops, not simply for migrating a Verizon MA customer to another carrier. Verizon MA does not charge a CLEC when a Verizon MA end-user customer transfers service regardless of whether the CSR or LSR is received by Verizon MA in an electronic or manual format. Nor does Verizon MA charge when a CLEC submits an LSR simply for number porting. Verizon MA Initial Brief, at 10-11. Broadview ignores these facts – and conveniently fails to mention in its discussion that the LSRs submitted by Verizon MA are to port a number – an activity for which the FCC ruled that carriers may not charge. Broadview Initial Brief, at 9-14.

⁴ Although the NYPSC did not preclude Broadview in the future “from filing detailed cost data to support the introduction of a customer service transfer charge specifically designed to recover the costs of performing these administrative tasks” (*id.*), the NYPSC indicated that it believes the costs may be “negligible.” *Id.* at 7 n.5. The NYPSC further stated that “[i]n order to avoid any suggestion of cost over recovery, Broadview should demonstrate that the costs associated with customer transfers are not already built into existing connection charges.” *Id.* at 8 n.6.

Therefore, Broadview's claim that "[t]here is a like degree of comparability between the costs recovered and the tasks subsumed by Broadview's Manual Process Service Transfer Charge and Verizon MA's Manual Intervention Surcharge" is erroneous. Broadview Initial Brief, at 12.

Finally, Broadview ignores the fact that customer migration practices among carriers are governed by industry guidelines (Verizon Exhibit 4). Verizon MA has demonstrated that it is committed to working with Broadview to enable the Company to utilize Broadview's Web Center Interface. Broadview Exhibit 4. Any issue raised by Broadview relating to Verizon MA's transmission of CSRs/LSRs should, therefore, be addressed through carrier negotiations, not by Broadview imposing unlawful Service Transfer Charges.

D. Verizon MA Has Properly Disputed Broadview's Service Transfer Charges and Should Not Be Subject to Pay Any Such Outstanding Bills.

Broadview contends that Verizon MA has no authority to resort to self-help remedies by withholding payment of billed Service Transfer Charges. Broadview Initial Brief, at 18-19. Broadview's assertion that Verizon MA is required to pay the outstanding Service Transfer Charges – no matter what – is patently wrong.

As discussed in Verizon MA's Initial Brief, Broadview has inappropriately included its Service Transfer Charges in an intrastate Access Tariff, to which Verizon MA is not subject. Verizon MA Initial Brief, at 3-5. Those charges were never formally investigated by the Department - and were misrepresented by Broadview as "comparable" to Verizon MA's rates to recover costs for performing tasks for which Verizon MA does not charge under like circumstances. Given these facts, should the Department find - as the NYPSC has – that Broadview's Service Transfer Charges must

be eliminated from its Access Tariff, Broadview should not be allowed to require that Verizon MA pay overdue amounts relating to those unlawful and unsubstantiated charges previously levied on Verizon MA. To do otherwise would unfairly benefit Broadview.

Verizon MA has appropriately disputed Broadview's Service Transfer Charges, and has properly withheld payment of any such billed charges pursuant to its rights under the terms of its Interconnection Agreement filed with the Department. Section 9.3 of that Agreement specifically requires that "the billed Party shall pay by the Due Date all *undisputed* amounts." Verizon MA notified Broadview that it disputed the Service Transfer Charges and invoked its rights under the Agreement to withhold payment of those charges.

Likewise, pursuant to dispute resolution procedures under Section 14 of that Agreement, Verizon MA has sought Department resolution of the dispute by initiating this Complaint against Broadview. Contrary to Broadview's claims, the Agreement's dispute resolution provisions would apply because Broadview has imposed its Service Transfer Charges on Verizon MA based on the false premise that Verizon MA charges comparable rates to CLECs for performing the same tasks – when the truth of the matter is that Verizon MA only charges CLECs for ordering network elements or facilities needed to serve the end-user customer. Broadview Initial Brief, at 19-20. Thus, Broadview's Service Transfer Charges are – under the circumstances - "assessed erroneously ... for a service that is not provided" and, therefore, are appropriately in dispute under the Agreement. *Id.* at 20.

CONCLUSION

For the reasons discussed above and in Verizon MA's Initial Brief, the Department should grant Verizon MA's Complaint.

Respectfully submitted,

VERIZON MASSACHUSETTS

Its Attorney,

A handwritten signature in cursive script, reading "Barbara Anne Sousa", positioned above a horizontal line.

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Dated: July 22, 2005

Complaint of Verizon Massachusetts
Concerning Customer Transfer
Charges Imposed by Broadview Networks, Inc.

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